Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 04-112
Reporting Requirements for U.S. Providers of International Telecommunications Services	)	
	)	
Amendment of Part 43 of the Commission's Rules	)	

COMMENTS OF AT&T CORP.

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TABLE OF CONTENTS

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AT&T Corp. ("AT&T") respectfully submits these Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY.

AT&T welcomes the Commission's new initiative "to simplify the reporting requirements and ensure the usefulness of the data collected by the Commission." Notice, ¶ 1. There have been significant changes in the international marketplace and Commission policies since the current Section 43.61 international reporting manual was adopted in 1995. Modifications in the international reporting requirements to take account of those changes are also now required to reduce unnecessary burdens on U.S. carriers.

AT&T supports the retention of international reporting requirements that ensure that the Commission has adequate information to allow it to prevent harm to the U.S. market from the abuse of foreign market power. As the Notice emphasizes (¶ 9), the Commission's "primary goal underlying the reporting requirements for international carriers has been and

[1] FCC 04-70 (rel. Apr. 12, 2004) ("Notice").

continues to be the protection of U.S. consumers and carriers from potential harm caused by instances of insufficient competition caused by the exercise of market power by foreign incumbent carriers." Because of the continued barriers to competition in most foreign countries, international termination rates on fixed networks are still far above cost-based levels, and U.S. carriers remain vulnerable to whipsaw actions by foreign carriers.[2] The major purpose of the international reporting requirements is to allow the Commission to address these continuing foreign-end market power concerns.

Another important priority is the need to simplify international reporting requirements to reduce the attendant burdens on U.S. carriers. The Commission recently adopted "a more limited application of our regulatory framework" to "encourage market-based arrangements between U.S. and foreign carriers."[3] Similarly, the Commission previously took significant deregulatory action in finding there have been "significant changes that have benefited consumers and competition in the past several years that support the detariffing of international interexchange services."[4] International reporting requirements should be consistent with these deregulatory policies.

While some of the changes proposed by the Notice would simplify the international reporting requirements in furtherance of these objectives, AT&T is concerned that other proposals would impose unnecessary and burdensome new reporting rules on nondominant U.S. carriers. In particular, several proposed changes seek to require nondominant U.S. international carriers to report information in much *greater* and unprecedented detail -- such as

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[2] *See generally, International Settlements Policy Reform*, IB Docket No. 02-234, FCC 04-324, rel. Mar. 30, 2004 ("*ISP Order*").
[3] *ISP Order*, ¶ 2.
[4] *2000 Biennial Regulatory Review*, 16 FCC Rcd. 10647, ¶ 6 (2001).

reporting separate "retail" and "wholesale" revenues on each route and separately reporting "country direct" traffic and "non-route specific" revenues like flat monthly charges.

When the Commission is otherwise removing unwarranted regulation and average U.S. international carrier per minute revenue is lower than ever before, there is no reason to require nondominant U.S. carriers to be subject to new and more burdensome reporting regulations of this type. Existing international revenue reporting requirements for nondominant U.S. carriers already are already much more detailed and burdensome than the reporting requirements that apply to domestic long distance revenues. Although the Notice recognizes (¶ 1) the need to avoid "imposing unnecessary burdens on carriers," these proposals would increase rather than reduce those burdens, and require U.S. carriers to divert further resources away from serving customers, without any corresponding benefit to Commission efforts to prevent the abuse of foreign market power.

The section 43.61(b) quarterly traffic and revenue reports should now be discontinued because they no longer fulfill their function of detecting one-way bypass when all traffic on most routes is terminated under commercial arrangements. Lastly, the Commission should simplify cable circuit status reporting requirements to remove burdensome and unnecessary reporting of service categories, and also should take steps to ensure the more complete reporting of available capacity on Commission-licensed cable systems by requiring major non-common carrier owners to file these reports.

II. THE COMMISSION SHOULD REMOVE PROPOSED NEW REQUIREMENTS FOR MORE DETAILED REPORTING OF U.S. CARRIER REVENUES.

AT&T supports the proposals to eliminate reporting requirements for off-shore points, eliminate requirements to report the number of messages, and consolidate the existing section 43.61 and 43.82 reports into a single report. These changes would further the

Commission's objective of simplifying international reporting requirements in line with changes in the international marketplace and Commission policies.

AT&T is concerned, however, that the proposals to begin separate reporting of retail and wholesale U.S.-outbound traffic on each route and for separate reporting of "country direct" and similar services and so-called "non-route specific" revenues would greatly outweigh any benefits they would provide. Nondominant U.S. carriers already report their international revenue in much greater detail than their domestic long distance revenue. These proposals would require them to file even more detailed international revenue information, which would require changes in their reporting systems that would frequently be extremely burdensome -- at a time when the Commission is otherwise reducing regulation of the U.S. international market. These proposed requirements also would not help the Commission achieve its "primary goal underlying the reporting requirements for international carriers," Notice ¶ 9, of preventing the abuse of foreign market power. Indeed, even present requirements for the reporting of country-by-country U.S. revenue are not needed to serve this primary goal.

There no need for the proposed "traditional settlement" and "other" categories for outbound and inbound traffic following the removal of the International Settlements Policy on most routes under the *ISP Order*. These changes also require the discontinuation of the section 43.61(b) quarterly traffic and revenue reports.

1. No Separate Reporting Should be Introduced for U.S. Carrier Retail and Wholesale Traffic, "Country Direct" Traffic and "Non-Route Specific" Revenues.

The proposed Schedule 2 would require U.S. carriers, for the first time, to report their U.S.-outbound facilities-based IMTS retail and wholesale traffic and associated revenues separately on each route, by "dividing the total number of minutes of IMTS traffic they report between traffic they receive from U.S. end user customers (subcolumns (a) and (b)) and traffic

they receive from another U.S. carrier (subcolumns (c) and (d))." Appendix C, ¶ 16.[5] Similarly, the proposed Schedule 5 would require U.S. carriers, for the first time, to provide separate world totals for their retail and wholesale U.S.-billed pure resale IMTS traffic and associated revenues. *Id.*, ¶ 27.

These new proposed requirements for separate reporting of retail and wholesale U.S.-outbound traffic and associated revenues are directly contrary to the Commission's intent to "simplify" these reporting requirements, Notice ¶ 1, and to "greatly *reduce* the complexity and detail of the information required from the largest carriers." *Id.*, ¶ 4 (emphasis added).[6] These new requirements seek more complex and detailed traffic and revenue information that would impose very significant new reporting burdens on U.S. international carriers. The information systems that AT&T uses to make these reports do not contain this information and the changes that would be required to allow AT&T to do so would be extremely burdensome. These new procedures and systems changes would not be otherwise needed in the normal course of business and therefore would divert resources from obtaining and serving customers.

Appendix C also proposes that "country direct" and "country beyond" traffic would be reported on a world total basis under schedule 5. Appendix C, ¶¶ 15, 25.[7] The present

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[5] However, traffic reoriginated for foreign carriers would not be reported on a route-specific basis. Appendix C, ¶ 16.

[6] Similarly, the proposed requirement for carriers to separate retail and wholesale revenues for private lines would also be unreasonably burdensome and would not serve any major policy objective. Appendix C, ¶ 37.

[7] The proposed treatment of this traffic is also very unclear. While the Appendix (¶ 15) states that country-by-country reporting of this traffic would be "eliminate[d]" from Schedule 2, Section III of the "Notes for schedule 2" states that it would be reported on a country-by-country basis in subcolumn (e) of proposed Schedule 2 as traffic settled under traditional settlements ("Traditional settlement minutes include . . . country-direct and country-beyond traffic [and] collect or international toll free traffic that U.S. carriers terminate foreign carriers under a traditional accounting rate arrangement.") Further clarification is required by the lack of symmetry between the statement in paragraph 15 of the Appendix that country direct and country beyond traffic

country-by-country reporting of "country direct" traffic, "country beyond" traffic, collect calls and international toll free calls is consistent with the longstanding business and regulatory treatment of this traffic as U.S.-outbound IMTS.[8] Any such change would also be extremely burdensome to implement without providing any clear benefit to Commission policies.

There also is no reason for the Commission to adopt the proposed new requirement for the filing of "non-route specific revenues" such as "flat monthly charges" on a world total basis. Appendix C, ¶ 18. The Commission does not require these types of revenues to be reported separately for domestic long distance services[9] and the Notice does not explain the need for separate reporting of these revenues for international services. U.S. carriers already file much more detailed information on their international revenues than on their domestic revenues, and it is unclear why any increased detail should now be required in these reports -- particularly when U.S. carrier average per minute international revenues are much lower than ever before.[10]

None of these proposals to require far more detailed reporting of international service revenue would further the primary policy goal affirmed by the Notice (¶ 9) of preventing harm to U.S. consumers and carriers from the abuse of foreign market power. U.S. customer information of this type has no relevance to U.S. carrier arrangements with foreign carriers, and

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would be removed from Schedule 2, and the absence of any reference to collect and international toll free traffic as being removed, and the statement in paragraph 15 of the Appendix that proposed schedule 4 would require the reporting of all these traffic types on a world total basis. For the reasons explained above, country-by-country reporting of this traffic should continue.

[8] *See, e.g., AT&T Corp., MCI International, Inc.*, 12 FCC Rcd. 13378 (1997) (home country direct traffic is subject to the International Settlements Policy ("ISP")); *AT&T Corp.*, 13 FCC Rcd. 18,739 (1998) (collect call traffic is subject to the ISP); *American Telephone & Telegraph Co.*, 10 FCC Rcd. 932 (1995) (international 800 traffic is subject to the ISP).

[9] *See* Telecommunications Reporting Worksheet, FCC Form 499-A, Apr. 2004, at 22 ("This category ["Ordinary long distance and other switched toll services"] includes most toll calls placed for a fee and should include flat monthly charges billed to customers").

[10] *ISP Order*, ¶ 72 (from 1997 to 2002 "the average price of a U.S.-international calling minute fell from $0.67 to $0.27, a decrease of $0.40").

the monitoring of foreign termination rates merely requires information on *total* inbound and outbound minutes and total payments to and from foreign carriers on each route.[11]

The Appendix argues that separate retail and wholesale world total data for pure resale traffic would assist determination of whether Commission policies should be "refine[d]" to "ensure that small users receive the benefits of the emerging competitive IMTS market." *Id.*, ¶ 29. The Appendix also states that "[c]hanges in the IMTS market are likely to affect small and large users quite differently." *Id.* Such claims are insufficient to support imposing a highly burdensome new reporting requirement on nondominant U.S. international carriers. The Commission long ago determined in the *Benchmarks Order* that it would rely on competition rather than regulation to ensure that settlement rate reductions are passed through to U.S. consumers.[12] The Commission only recently reaffirmed the soundness of that judgment when it found in the *ISP Order* that "[b]oth statistical data collected by the Commission and economic theory indicate that reductions in settlement rates are being passed on to U.S. consumers."[13]

Indeed, the Commission found that "average price reductions substantially *outpaced* settlement rate reductions during this period [1997 through 2002], reflecting pass-through of settlement rate reductions as well as other cost savings and increasing competition in the U.S. international market" from 1997 to 2002."[14] These findings provide no basis for any "refinement" of Commission policies relying on competition rather than regulation of

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[11] *Id.* (Section 43.61 reports show that average settlement rate for all U.S.-outbound traffic has fallen to $0.11).
[12] *International Settlement Rates*, 12 FCC Rcd. 19806, ¶ 270 (1996) ("*Benchmarks Order*") ("we disagree with those commenters that argue that competition in the U.S. market for international services may be insufficient to ensure that settlements savings are fully reflected in reduced collection rates").
[13] *ISP Order*, ¶ 72.
[14] *Id.* (emphasis added).

nondominant U.S. international carriers to ensure that all users benefit from settlement rate reductions.

The Commission further relied on competition, rather than regulation, to protect customers of non-dominant U.S, international carriers when it detariffed non-dominant U.S. carriers' provision of international services in 2001. The Commission took that step based on its finding that "there has been a substantial increase in the level of competition in the international interexchange market" resulting from increased privatization and liberalization, declining international settlement rates, the WTO Basic Telecommunications Agreement, and the reform and streamlining of Commission rules and policies.[15]

The further regulation of nondominant U.S. international carriers that is suggested here would run strongly counter to this recent precedent and would be totally out of step with the Commission's deregulatory approach to nondominant U.S. carriers in the domestic U.S. market -- which file no route or service-specific traffic or revenue information at all. Indeed, when the Commission has just removed regulation of U.S. international carrier arrangements with foreign dominant carriers (which include many foreign *monopoly* carriers), by removing the International Settlements Policy and its associated filing requirements on benchmark-compliant routes in the *ISP Order*, there can be no justification for additional regulation of non-dominant U.S. international carriers or for subjecting them to onerous new reporting requirements that would not assist Commission efforts to prevent the abuse of foreign market power. Even existing requirements for the country-by-country reporting of U.S. international revenues are unnecessary to serve this primary goal. There is certainly no reason for the much more complex and burdensome revenue reporting that is proposed here.

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[15] *2000 Biennial Regulatory Review*, 16 FCC Rcd. 10647, ¶ 6 (2001).

2. No Reporting of Methods of Termination Should be Required.

The new international traffic rules adopted by the *ISP Order* make it unnecessary to require carriers to divide minutes of IMTS traffic in proposed Schedules 2 and 3 between that settled under "traditional settlements" and that "handle[d] under any other arrangement such as ISR." Appendix C, ¶¶ 19-20, 22, 24. That distinction was relevant under the Commission's former rules, which allowed traffic on the large number of routes authorized for ISR to be settled either under ISR arrangements or under arrangements governed by the International Settlements Policy ("ISP"). The *ISP Order* removes this dichotomy, by abolishing the ISR policy and by removing the ISP when benchmark compliant rates are provided. Apart from the small number of routes that remain subject to the ISP, all U.S. outbound and inbound traffic will in the future be settled under commercial arrangements, rather than traditional settlements.

3. Section 43.61(b) Quarterly Traffic and Revenue Reporting Should be Removed.

Another result of the new rules adopted by the *ISP Order* is that the Section 43.61(b) requirement for quarterly traffic and revenue reporting by U.S. carriers no longer serves its intended purpose. As described by the Notice (¶ 51), these reports were established in 1997 to detect "one-way by-pass," under which foreign carriers may raise U.S. outpayments by terminating their U.S.-inbound traffic under ISR arrangements while requiring U.S. carriers to pay high settlement rates for U.S.-outbound traffic.[16] Under this by-pass safeguard, any change of 10 percent or more in the ratio of inbound to outbound "settled traffic" (*i.e.*, traffic terminated under "traditional settlements") in two successive quarters on a route creates a presumption that market distortion has occurred.[17]

[16] *See Benchmarks Order*, ¶¶ 239, 251.
[17] *Id.*, ¶ 249.

This former safeguard is no longer effective or relevant as the result of the regulatory changes adopted by the *ISP Order*, under which all traffic on virtually all routes will be terminated under commercial arrangements rather than traditional settlements. Any further purpose served by these quarterly reports is far outweighed by the associated burdens on nondominant U.S. international carriers.[18] The section 43.61(b) reporting requirement for nondominant U.S. international carriers should accordingly be removed.

The section 43.61(c) requirement for the filing of quarterly traffic and revenue reports by switched resale carriers affiliated with dominant foreign carriers continues to prevent the abuse of foreign market power and should continue. This reporting requirement was established because of the Commission's concern that dominant foreign carriers could use above cost termination rates to harm U.S. competition by manipulating traffic.[19] These concerns will not be removed until termination rates are reduced to cost-based levels, yet the average settlement rate in 2002 of $0.11 per minute is still almost three times higher than conservative estimates of foreign carrier termination costs.[20]

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[18] The section 43.61(b) reporting requirement was also intended to assist in detecting price squeeze behavior, which remains a continuing potential concern until termination rates are reduced to cost-based levels. *Benchmarks Order*, ¶ 222-26. Because this price squeeze concern is adequately addressed by the section 63.10(c)(3) requirement for the quarterly filing of traffic and revenue reports by U.S. carriers classified as dominant because of affiliations with carriers with market power at the foreign end of a U.S. international route, the section 43.61(b) reporting requirement need not be retained for this reason.

[19] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23891, ¶ 211 (section 43.61(c) quarterly reporting requirement "should enable us to detect whether switched resellers are engaging in traffic distortion schemes on affiliated routes").

[20] *See ISP Order*, ¶ 82 (section 43.61 data shows average settlement rate of $0.11 in 2002); Letter dated Feb. 5, 2003 from Douglas Schoenberger, AT&T, to Ms. Marlene Dortch, FCC, IB Docket No. 02-234 (new TCP study of 65 countries shows average rate of 4.03 cents per minute).

III. CIRCUIT STATUS REPORTING REQUIREMENTS SHOULD BE SIMPLIFIED.

AT&T believes that the circuit status reports continue to serve a useful function by providing information on the availability of capacity, but should be simplified to remove burdensome and unnecessary requirements for the reporting of service categories. Because present cable circuit status reports cover *less than one fifth* of total available cable capacity, the Commission also should require the more complete reporting of available capacity on Commission-licensed cable systems. Specifically, major owners of non-common carrier systems -- those that would qualify as applicants if their licensing authority was subject to the Commission's existing licensing rules -- should be required to submit cable circuit status reporting information. Because "almost all" new cables are non-common carrier systems, Notice (¶ 22), their omission greatly reduces the utility of these reports.

1. Service Category Reporting Requirements Should be Removed.

The present section 43.82 reporting requirement would be simplified and rendered less burdensome without adversely affecting the utility of these reports by eliminating the present requirement for the reporting of circuits by service categories. As the Appendix indicates (¶ 44), the critical information provided by this report is "the availability of new circuits and the amount of currently unused capacity." This information does not require reporting by service categories -- as shown by the fact that idle circuits are reported under a separate service code "regardless of which service the circuits are planned for." *Manual For Filing Section 43.82 Circuit Status Data*, FCC Report 43.82, at 9. Moreover, the purpose of any matching of circuits with particular service categories is unclear when the distinction between voice and data is fast eroding as all services become digitalized.

Rather than simplify these reporting requirements in light of these industry changes, the proposed schedule 8 would increase the complexity of the present reporting requirement and the attendant burden on U.S. carriers by adding a further service category for "data services." Appendix, C, ¶ 43. The Appendix also asks whether a separate line category for Video service circuits should be established. *Id.*, ¶ 47. The Commission should instead simplify these reports by removing the service category reporting requirement altogether.

2. Major Non-Common Carrier Owners Should File Circuit Status Reports.

AT&T agrees with the concerns expressed by the Notice (¶ 24) and by recent Section 43.82 Circuit Status reports that these reports provide very incomplete information on available capacity because only common carriers are required to make these filings "even though the facilities are generally fungible and are often provided from the same platform (submarine cable or satellite facility)." As the Commission noted in 2001, "most recently-licensed cable systems operate on a non-common carrier basis."[21] It is also clear that the gap between the capacity reported under section 43.82 and the total available capacity on all cables licensed by the Commission is very wide. The 2002 Section 43.82 Circuit Status Data report states that "the overall reported cable capacity accounted for ***16.8%*** of the total available cable capacity."[22]

While AT&T believes that these reports need to be more complete, AT&T is also aware that, as noted by the 2002 Section 43.82 report, "much of the capacity on those private cables is sold to end-users, such as Internet service providers (ISPs) or to foreign carriers or foreign ISPs"[23] and that these entities are not subject to Commission regulation. AT&T

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[21] *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, FCC 01-332, rel. Dec. 14, 2001 ("*Submarine Cable Order*"), ¶ 70.
[22] FCC International Bureau Report, 2002 Section 43.82 Circuit Status Data, December 2003, at 4 (emphasis added).
[23] *Id.*, n.4.

therefore suggests that the section 43.82 reporting requirement should be extended merely to include those entities that are required to be applicants for a cable landing license under Rule 1.767(h). Those required applicants are entities that either own or control a cable landing station in the United States, or both own or control a five percent or greater interest in the cable system and use the U.S. points of the cable system.[24] As the Commission noted in determining that these entities should be required to be applicants, including for non-common carrier systems, this would include those entities with "a significant ability to affect the operation of a cable system," while excluding "smaller carriers or investors without such ability."[25]

All owners of non-common carrier circuits that would qualify as applicants if their licensing authority was subject to existing rules should be required to submit cable circuit status reporting information. These major owners of non-common carrier circuits should provide country-by-country information on active and idle circuits. As noted above, service category reporting requirements should be removed for common carriers filing these reports and non-common carriers also should not be required to provide information on service categories.

In response to other questions raised by the Notice concerning cable circuit status reports, AT&T believes that carrier-specific circuit status data is competitively-sensitive and properly treated as confidential and not made available to the public.[26] Notice, ¶ 69. Capacity information should continue to be reported in units of 64 Kbps circuits, which can readily be used to measure new large capacity systems. Appendix C, ¶ 42.

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[24] 47 C.F.R. Sect. 1.767(h).
[25] *Submarine Cable Order*, ¶ 53.
[26] U.S. carriers should also continue to obtain confidential treatment of any other competitively-sensitive information reported to the Commission pursuant to any of the requirements set forth in the Notice.

CONCLUSION

For the above-described reasons, the Commission should modify the international reporting requirements to remove outdated requirements and to reduce unnecessary burdens on U.S. carriers. However, the Commission should not require separate reporting of retail and wholesale U.S.-outbound traffic, "non-route specific" revenues or "country direct" traffic, and should remove the section 43.61(b) quarterly reports. Lastly, the Commission should simplify cable circuit status reporting requirements and should require major non-common carrier owners to file these reports.

Respectfully submitted,

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July 26, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of July, 2004, I caused true and correct copies of the foregoing Comments of AT&T Corp. to be served on all parties on the attached service list by electronic filing.

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